

Comments of General Mills, Inc to USDA
re: DFA Proposal concerning Class I products

Presented by:
Robert Waldron, Yoplait Division President

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Introduction To General Mills and the Yoplait Product Portfolio

On behalf of General Mills and Yoplait, I would like to thank the U.S. Department of Agriculture and the Agricultural Marketing Service for this opportunity. My name is Bob Waldron; I am President of Yoplait, which is a division of General Mills, and the leading brand yogurt in the country. I am joined today by Bob Anderson, Yoplait's Director of Consumer Insights, Jeff Shapiro, from our Government Affairs office and Deb Grocholski, Yoplait's legal counsel. Headquartered in Minneapolis, Minnesota, General Mills is the world's 6th largest food company, with more than 12 billion dollars in annual sales and more than 28,000 employees worldwide. We market consumer food products in more than 100 countries and we generally have the number 1 or number 2 brand in every category in which we compete. We know how to develop and market our products to meet the needs of our consumers, so when we talk about how consumers view and use our products, you can trust that we know what we are talking about. We are the Big G cereal company and Pillsbury. We are Betty Crocker and Green Giant. We are a leader in branded organic products. And, of course, we are also Yoplait yogurt, which brings us here today.

General Mills began selling Yoplait in America in 1977. [Refer to Chart 1] Over the years, Yoplait has expanded from its Original line of flavors to Light, Whips, Thick & Creamy, and more recently Healthy Heart. We have also expanded the brand to attract younger consumers, providing the health benefits of yogurt to a new generation with products such as Go-Gurt – yogurt in tube-form, Trix yogurt, and Yumsters. As Yoplait's product offerings have expanded, so too have our purchases of dairy ingredients. As a company, General Mills is one of the largest purchasers of dairy products in the U.S., and we're proud of that. We are partners with dairy producers in the same value chain, and we want and need to have a healthy U.S. dairy industry. My primary purpose here today is to support a proposal that we believe will continue the win-win relationship between dairy producers and manufacturers of dairy-containing products.

Yoplait products are offered in dozens of flavors and available in every U.S. market. Yoplait consumers have come to rely on us to provide great tasting yogurt products. The main line of Yoplait products is 6 ounce cups that our consumers often eat away from home. We saw an opportunity to provide the Yoplait consumer an even more convenient yogurt product. As a result, we introduced our Nouriche yogurt smoothie.

Sold in 11-ounce bottles, Nouriche provides more than twenty percent (20%) of the daily recommended intake of carbohydrates, protein, and more than fifteen (15) other vitamins and nutrients including folic acid, and Vitamins A, C, D, and E. Nouriche packs 260 calories and is marketed as a yogurt smoothie with superior nutrition. To compare, Nouriche has more than twice the calories of an equivalent amount of nonfat milk and twenty-five percent (25%) more calories than an equivalent amount of whole milk. Like all of our yogurt smoothie products, Nouriche is shelved in the yogurt section of the dairy case and is commonly consumed in place of our other yogurt-containing products. [Refer to Chart 2]. In short, consumers are under no impression either in the grocery store or by our marketing that Nouriche is anything other than another form of yogurt.

Today, we will provide evidence demonstrating that our yogurt smoothies, including Nouriche, Gogurt Smoothie, and Yoplait Smoothie, are not a substitute for or in competition with fluid milk. Rather, these products are marketed by Yoplait as yogurt products and are in fact used by consumers as they would use a food product. Accordingly, these food products belong in Class II with other yogurt products rather than as Class I fluid milk.

Products Must Be Classified In Accordance With Form and Use

As has been reviewed in earlier testimony, the Agricultural Marketing Agreement Act requires that milk be classified according to its form and use.¹ With respect to both form and use, Yoplait's yogurt smoothies are fundamentally different than fluid milk. They don't have the same form as fluid milk, and consumers use them for very different purposes than fluid milk. Over the past two years, Yoplait has made several presentations to the Department outlining the form and use of Nouriche. We are pleased to present that same data here, despite the lack of any evidence that suggests that yogurt smoothies compete with fluid milk.

The data we have already provided demonstrates that Yogurt smoothies, while made from dairy components, do not compete with fluid milk. Mere assertions to the contrary will not change the facts. An objective assessment of the marketing and consumption of these products makes clear that these are food products that are marketed, sold, and used as such by consumers, and are in competition with other food products, not fluid milk.

Consumers Want Yogurt-Containing Products That Are Portable

The fundamental reality is that consumer preferences are changing to more convenient and portable food products that fit in better with today's ever more active and hectic lifestyles. Just two weeks ago, *The Wall Street Journal* ran an article that focused on this trend, profiling the proliferation of on-the-go stain removers because so many Americans today eat in the car. A Yoplait portable yogurt product was specifically referenced, not because it's messy to eat, of course, but rather because of its convenience and portability.² Successful products in today's marketplace are reflective of and often responsive to changing consumer needs. What yogurt-makers have done is give the consumer a more "eat-in-the-car-friendly" form of yogurt, and in my view, petitioners should be embracing the development and success of these new products.

Continued and expanded use of dairy ingredients provides increased revenue for dairy farmers. As I will discuss later, increasing the costs of these ingredients will make it harder for food companies to innovate and create new dairy-containing products. It will also make it more likely that companies will take advantage of recent and upcoming technological innovations and use non-dairy ingredients that provide comparable functionality and nutrition. Either outcome is far more likely than expecting a manufacturer to simply assume the increased ingredient costs, and either outcome will most certainly decrease farmer income. Given that both dairy producers and General Mills are in the same value chain, we all suffer if we turn consumers away from dairy and dairy-containing products.

¹ 7 U.S.C. 608c (5)(a) form and use

² Ellison, Sarah. "Life on the Go Means Eating on the Run, and a Lot of Spilling," *The Wall Street Journal*, June 7, 2005. A1, Column 4.

Consumer Data Show that Yogurt Smoothies are Used as a Food

I want to briefly walk you through how a company like General Mills researches a new product, like our yogurt smoothies, as well as tests consumer interest. In 2003, our team of researchers ran a comprehensive study to capture consumer attitudes about a wide variety of portable products.³ We tested 30,000 adults, ages 18-70 years old over a period of one work week. The goal of such testing is to discover not only what consumer interest is, but also to identify where there may be opportunities that have not yet been captured. We showed 67 products individually to different groups of consumers; these products included both products already available and some that were at that time only concepts under consideration. Consumers we asked both their intent to purchase and how often they would buy the product. We also collected their perceptions of the product on a wide variety of attributes covering taste, satiety, nutrition, and convenience, among many other areas.

We learned from this study that a portable yogurt product that is calorie dense, high in vitamins and nutrients, yet similar enough to other products to which the consumer is already loyal, would be a viable product. We also learned that consumers view these yogurt smoothies as competitors to nutritious snacks like Power Bars and tube yogurt, and secondarily to cup yogurt products. Fluid milk, in contrast, has very different perceptions and expected use.

In providing this new product, we recognize that we have essentially created competition for some of our own products. But this is what consumers are saying they want, and if we don't make it, we know others will. We know that when we discover a consumer trend – that people want filling, nutritious, portable food products – consumers loyal to Yoplait expect us to provide a product to meet their demand. If we don't, we risk losing consumers to a competitor.

Nouriche satisfies the need for “on-the-go” nutritious food. When we tested consumers for awareness, attitude, and usage of the product and asked: “Would you consider Nouriche to be an acceptable meal replacement?” – sixty-three percent (63%) said “yes.”⁴

Not surprisingly, consumer surveys also indicate Nouriche is competing against other food products and is not competing against fluid milk or other beverages. In fact, verbatim analysis shows that instead of Nouriche, consumers would eat (in order): cereal, cup yogurt, fruit, a sandwich, dessert, chips, pretzels, Slim-Fast, a hamburger, a bagel, candy, orange juice, soda, a granola bar, fast food, ice cream, cookies, and pizza...all before they would reach for a glass of milk.⁵ In fact, less than one percent (1%) of those tested even mentioned milk as a possible substitute.

In recent weeks, Yoplait has introduced two new yogurt smoothie products: GoGurt Smoothie, a 5-ounce product for children sold in a four-pack; and Yoplait Smoothie, an 8-ounce “snack size” product for adults. While our experience with these products is young, there is some data I would like to share with you as further evidence that our smoothies are viewed by the American consumer as food products, not fluid milk.

When was the last time you saw a consumer reach for a gallon of milk and the first thing they did was look at the nutrition panel? My guess would be nearly never, yet six out of ten consumers selecting Yoplait Smoothies turn to the nutrition panel first, akin to what consumers do before they purchase a box of cereal, a package of granola bars, or even a TV dinner.⁶ Similar to our experience with Nouriche, these products are not turning milk drinkers into yogurt eaters; instead, nearly eighty percent (80%) of Yoplait Smoothie's consumers would buy another yogurt product as an alternative.⁷ In fact, sixty-eight percent (68%) of consumers eat our yogurt

³ GMI study, March 27-31, 2003.

⁴ GMI consumer test, August 15-19, 2002.

⁵ GMI Consumer Testing February 2003 - consumers responses to the question: “Would you have Yoplait Nouriche instead of something else? If so, what?”

⁶ Consumer Research Services product evaluation for Yoplait Smoothie

⁷ Id.

smoothies for breakfast, and thirty-two percent (32%) of adults tested said they would have a Yoplait Smoothie in place of dessert.⁸

If consumption of anything slows in markets where new yogurt smoothie products are introduced, it would be spoonable cup yogurt. [Refer to Chart 3]. As you can see from this chart, the annual compound growth rate of cup yogurt has slowed considerably since yogurt smoothies were introduced. Clearly, these yogurt smoothie products are competing with other food products, such as yogurt, and not competing with fluid milk.

These findings are consistent with consumer consumption data, which demonstrate that milk is viewed primarily as a complement to a meal, while a yogurt-containing product such as one of our yogurt smoothies are seen as a snack or a meal. I want to show you two charts based upon the NPD Group's National Eating Trends study, a widely recognized and respected industry standard, both of which show stark differences between how consumers use yogurt smoothies and fluid milk.

[Refer to Chart 4]. This first set of data is derived from asking consumers how they classify the foods they eat into four (4) choices, with (1) being a "base dish" – something eaten on its own; (2) an additive; (3) an ingredient, or (4) a cooking aid. As you see, Yogurt smoothies are eaten almost exclusively on their own. Consumers use them as a base dish nearly ninety-six percent (96%) of the time. In contrast, consumers use milk as an additive or ingredient over fifty-four percent (54%) of the time, and milk is consumed on its own less than half the time.

[Refer to Chart 5]. This second set of data is derived from evaluating the eating occasion in which consumers are using certain foods or beverages. The most telling fact here is how rarely fluid milk is seen as a snack while yogurt smoothies are commonly enjoyed as a snack. Consumers are more likely to drink milk with meals, particularly breakfast or dinner, and are much more likely to consume products like Nouriche as a snack.

Of course, I am sure that some people might try to argue that yogurt smoothies are competing with fluid milk because they compete with cereal, and that's where consumers use a lot of fluid milk. The fact of the matter is, our market research demonstrates that the breakfast market can be divided into eight sub-groups of products, based on consumer perceptions and use. Within these groups, yogurt smoothies are in the same group as cup yogurt, and there are no cereal options in this group. Within this group, yogurt smoothies compete most closely with granola and cereal bars, other portable options. To state the obvious, General Mills also markets cereal as well as granola and cereal bars, and we know what we are talking about when we talk about these markets.

As I stated previously, our yogurt smoothie products are shelved with other yogurt products, not fluid milk. In at least ninety-five percent (95%) of all stores that carry our yogurt smoothie products they are placed in the yogurt case, and seventy-two percent (72%) of the time they are placed directly with other Yoplait-branded products.⁹ Fundamentally, smoothies are a food product; they are not beverages that compete with fluid milk.

Yoplait yogurt smoothie products are manufactured in and shipped from three manufacturing facilities in the United States and distributed nationally. Part of the reason they can be shipped so far is due to a shelf-life that greatly exceeds the shelf-life of fluid milk. In fact, factors determining shelf-life for yogurt smoothies vary greatly from those that affect the shelf-life of fluid milk. If all of these differences are not enough, I will refer you to an additional chart: "Trends in Milk Consumption versus Yogurt Smoothies. [Refer to Chart 6]. While it is clear that milk consumption began its decline well before yogurt smoothies hit the market, it is hard to imagine how the relatively tiny volume of yogurt smoothies sold each year could ever have a meaningful impact on the fluid milk business.

As we have demonstrated, our yogurt smoothies do not compete with fluid milk. In both form and use, they are food products and should be classified as such. If you don't believe us, believe our consumers, one of whom sums it up quite nicely in a recent consumer focus group, and I quote:

"Perfect for a quick meal on the run or a good snack for a growing teenager."

⁸ Id.

⁹ IRI Mosiac InfoForce Audit, September 2004

General Mills' Protein Proposal

I would like to now take a moment to review the proposal offered by General Mills with respect to this hearing. Food and dairy product manufacturers have been utilizing current standards as a guide for developing new food products for decades. While we believe there is clear, irrefutable evidence that our yogurt smoothies should be Class II, we also recognize that modifying the current classification scheme raises a host of issues and questions for the entire industry. Thus, we would support maintaining the status quo and leaving the existing classification system in place.

If USDA believes that it is necessary to change the current system, it should act to classify yogurt smoothie products as Class II. In our proposal to USDA, we advocate that if the Department proceeds to convert to a protein standard, the Department should exclude from the fluid milk product definition any product with less than or equal to 2.2 percent skim milk protein AND at least twenty percent (20%) yogurt by weight. By requiring that products meet both a protein and a percentage yogurt requirement, our proposal represents a modest additional restriction to the current regulation. This percentage yogurt requirement should address producers' concerns that Class II products are in direct competition with fluid milk.

In the calculation of the 2.2 percent standard, I want to make clear that our proposal does not include milk protein obtained from added concentrated or dried whey including whey protein concentrate or WPC,¹⁰ and here's why. When considering a protein source, it is relevant to consider the other nutrients also supplied with the ingredient under consideration. [Refer to Chart 7]. For simplicity, the example in this chart is based upon 100 grams of protein via nonfat dry milk and a commonly used variety of WPC. I won't read the entire chart, but note the substantial difference in calcium, for instance. Nonfat dry milk provides 10 times the calcium than is found in WPC. Though the quality of the actual protein from nonfat dry milk and whey protein concentrate is similar on the basis of Protein Efficiency Ratios, it is clear that when one sources protein from WPC rather than nonfat dry milk, additional fortification would be needed to match the complete nutrient profile. The value of WPC just isn't the same, and pricing it like nonfat dry milk is not going to sell more dairy. Food manufacturers will look for other sources of protein. Yoplait, for example, principally uses added whey as a protein source. As such, whey is an efficient, but replaceable, ingredient. And we are not alone in this regard.

If USDA includes added whey in any protein classification, USDA should set the milk protein standard consistent with the current standards of identity for fluid milk in order to create some rational, objective relationship between the standards and the nutrition profile of the products. While the standard of identity for milk does not contain any protein requirement, the requirement that milk contain 8.25 percent milk solids converts roughly to 2.84 percent milk protein. As such, if AMS is inclined to adopt a milk protein standard that includes all dairy protein in determining product classification – including added whey – we would advocate a 2.84 percent milk protein standard, so that dairy products containing less than 2.84 percent protein and containing twenty percent (20%) yogurt would be Class II products.

Converting to a 2.2 percent protein standard (or 2.25 percent protein standard, as National Milk Producers Federation has proposed) and including whey in the calculation of protein is NOT a simple conversion of the current 6.5 percent nonfat milk solids, as the current standard does not include whey. If the Department is inclined to include whey in such a calculation, establishing it based upon the objective standard of identity for fluid milk would preserve the spirit of the current standard, especially since doing so would not create an inherent disincentive to use whey as a protein source. Furthermore, by using the standards of identity for fluid milk as a benchmark from which to establish a protein standard, USDA can guarantee that further refinement of the classification standards will be done in a manner reflective of modern formulation and technological advances, all while ensuring that fluid milk and fluid milk products remain in Class I. If the standards of identity of milk were to change, as dairy producers have advocated and as AMS has studied for quite some time, the milk protein standard move as well.¹¹

Finally, we request USDA allow for normal process variances that may occur during the manufacturing process. While neither appreciable to the consumer nor meaningful in the product's application, it is our hope that if AMS

¹⁰ 21 CFR 184.1979(a)-(c)

¹¹ "Raising the Minimum Nonfat Solids Standard to the National Average in Raw Milk: A Study of Fluid Milk Identity Standards," AMS, August 2003.

adopts any protein standard, it do so with the understanding that insignificant variation may occur occasionally, and that such variance should not be cause for reclassification. Both USDA and FDA recognize this fact in regulations pertaining to nutrition labeling, and both provide for a twenty percent (20%) variance. We believe this approach should also be utilized by AMS if it determines a protein standard is an appropriate method of classification.

Creating Economic Incentives to Find Alternatives to Dairy Protein is not Good for Producers

As I noted, if USDA were to include added whey in the calculation of a milk protein standard, it will directly lead to the increased utilization of alternative proteins. Companies will look for ways to reformulate in order to reduce or even eliminate the use of milk and dairy proteins in their products. Market innovation will continue, and new products will be developed that do not use milk or milk proteins. The end result could be that dairy prices will drop and dairy producer income will decline. Instead of benefiting from a proliferation of new products that utilize dairy ingredients, dairy producers could undercut their own market by creating incentives for food manufacturers to move away from using dairy in their products altogether.

Already, we have seen suppliers of dairy proteins begin to offer their customers non-dairy proteins that can replace or substitute for dairy. Take for instance Armor's announcement last month that a soy protein isolate it manufactures could be used to replace some or all of the dairy proteins traditionally used in several products on the market today.¹² And Armor is not alone; other major suppliers have begun developing vital wheat gluten, wheat protein isolates, and egg-based ingredients as comparable alternatives to dairy-based ingredients. Consumer acceptance of these alternative proteins is already very high. For instance, the FDA may allow a qualified health claim linking soy protein consumption with a reduced risk of certain cancers, and has already approved a claim linking soy protein with lower cholesterol.

Such claims only increase demand for soy proteins. In recent weeks, soy producer Solae announced a partnership with Yoplait in France, which is a separate and distinct company from Yoplait USA, but does offer similar yogurt products. Throughout France, Solae and Yoplait will begin selling Bioplait – a spoonable yogurt product containing soy protein. Closer to home, White Wave has begun selling its Silk Live product, which is a soy-based live-cultured smoothie. White Wave's product contains six live and active cultures, is sold in single serving 10-ounce bottles, and contains 200 calories per serving. Similar to our fortified yogurt smoothies such as Nouriche, Silk Live is in competition with our yogurt smoothie products, not fluid milk.

The use of non-dairy proteins in dairy products can be done here and now. It is not some technological fantasy. Companies can and will respond immediately if USDA acts to change the terms or application of the current classification standards to make these protein sources more expensive. While consumers certainly have an appreciation for dairy-containing packaged goods, our experience also shows consumers to be very sensitive to even the slightest changes in price. Facing increased commodity prices when cheaper, comparable alternatives are available, manufacturers will simply move to the lower cost options.

General Mills' Position on Other Proposals

We believe that the fluid milk definition should not change. The proposal that we have brought forward we believe preserves the current standard, with the restriction that they contain a significant amount of yogurt. This restriction is consistent with the data we have provided. General Mills could support Proposal 7 if added whey was not included in the protein standard, just as it is not included today. We do not support any of the other proposals in general because they are either too subjective or represent a significant departure from today's definition of fluid milk.

Review and Conclusion

To review, as early as January 2004, General Mills requested that USDA conduct an economic analysis to determine what yogurt smoothie products, if any, were competing against fluid milk. To date, such analysis by the Department has not been conducted. It is troubling that USDA is advancing an agenda to change the terms of the current classification standards in the absence of any data that support the need for such a move.

¹² FoodNavigator.com, May 13, 2005

Conducting a thorough economic analysis would demonstrate a number of realities: 1) yogurt smoothies are in no way competing with fluid milk; 2) the presence of such products in the marketplace – as Class II – actually adds revenue for producers; and finally 3) USDA understands the value that manufacturers such as Yoplait provide dairy producers by marketing and developing dairy-containing products. USDA's approach to this issue should be broad enough to promote innovation to meet demand, recognizing that innovation is likely to increase dairy consumption and result in higher producer revenues.

Are yogurt smoothies consistent with the form and use of fluid milk? Clearly not. Fluid milk contains neither the calories nor the nutrients of Yoplait's yogurt smoothies, which are characterized by the yogurt contained in the product. Consumers use these products as a food much the same way as they consume yogurt.

I appreciate the opportunity to be here today, and I would be happy to try to answer any questions you may have. Thank you.

Yoplait Products



Chart 1

Portion of Sample Yogurt Shelf Set

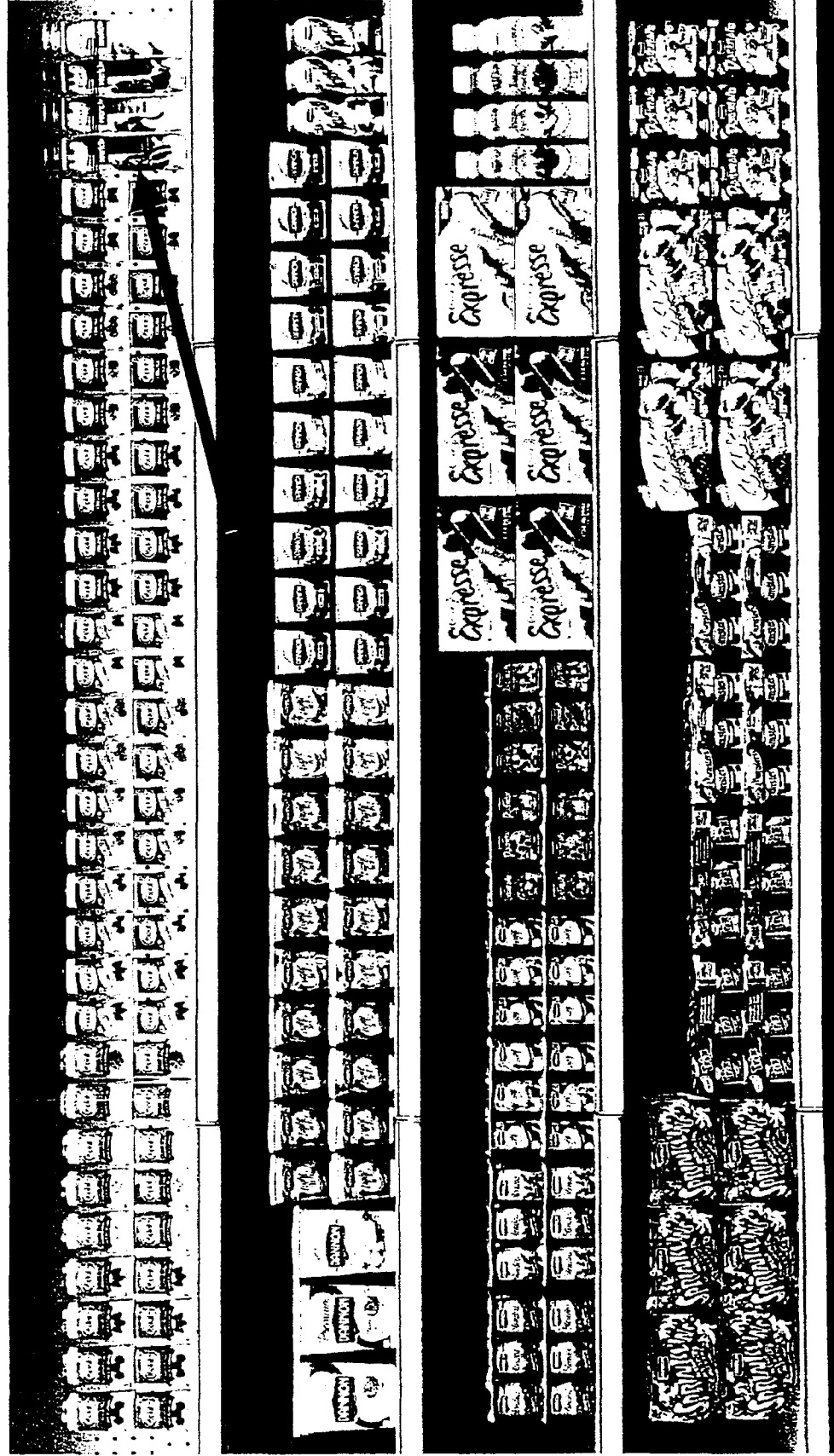
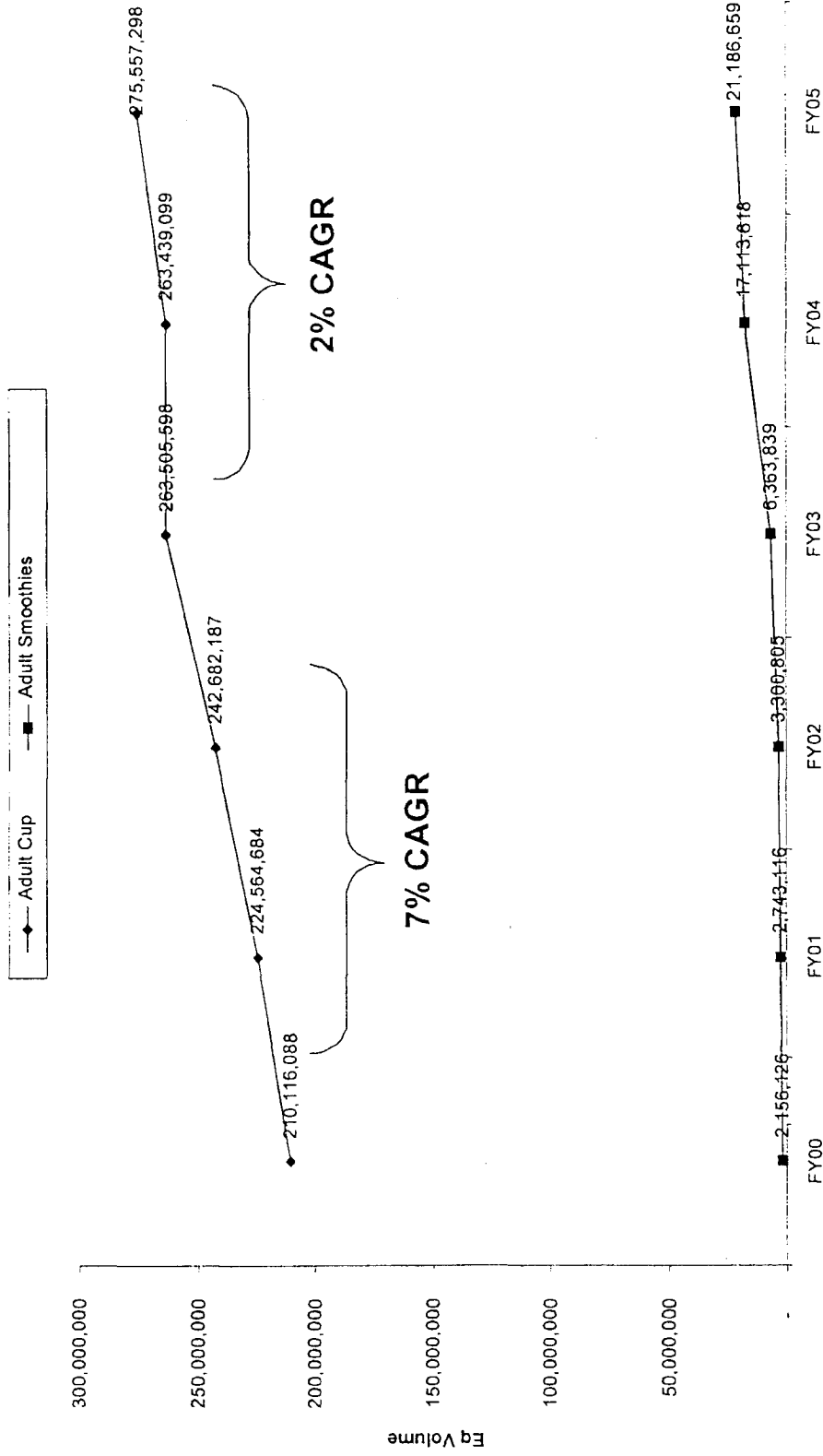


Chart 2

Source: GMI Category Management

Cup Yogurt Growth Slows as Yogurt Smoothie Volume Grows

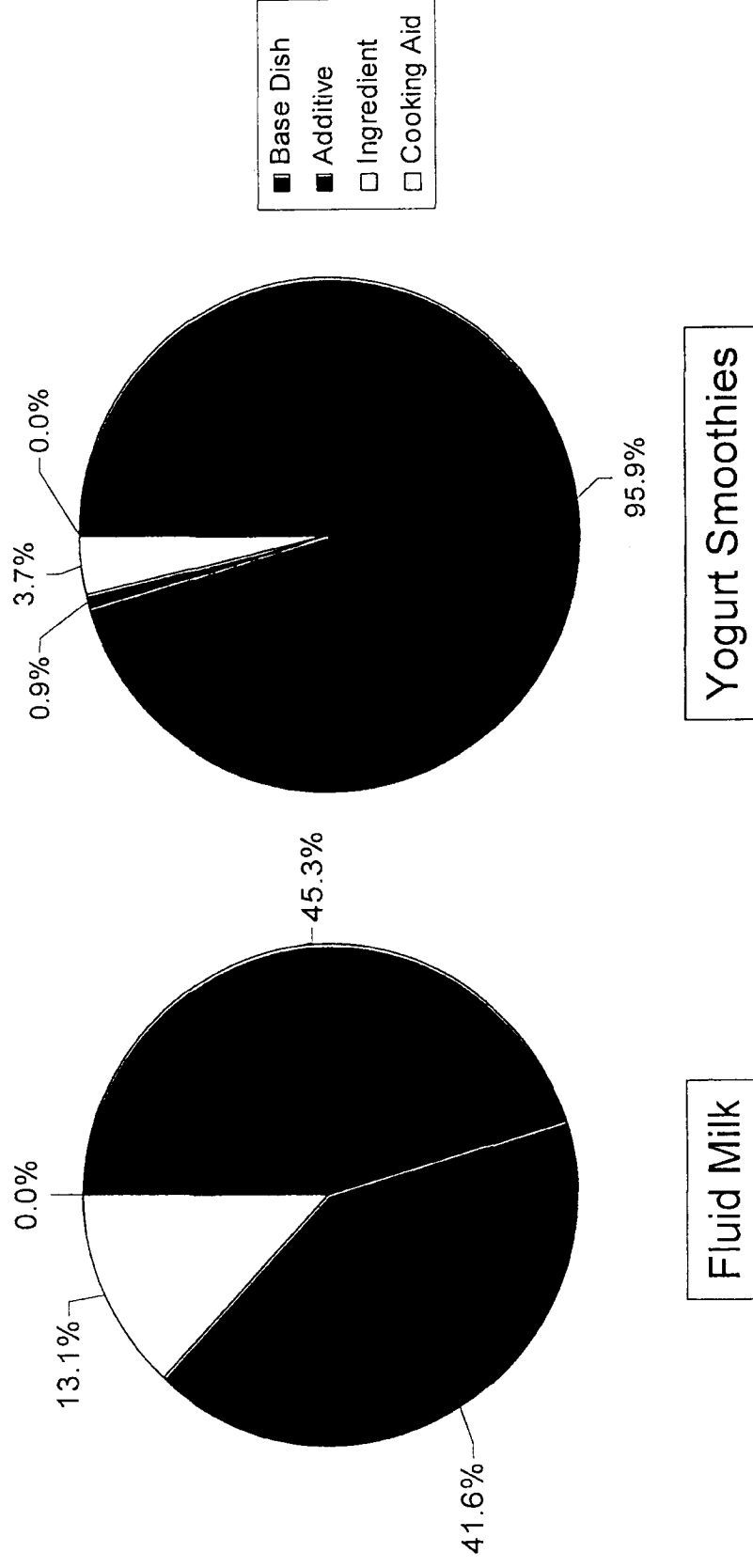
Yogurt Eq Volume Trends - Food/Drug/Mass X WM



Source: ACNielsen Scanner

Chart 3

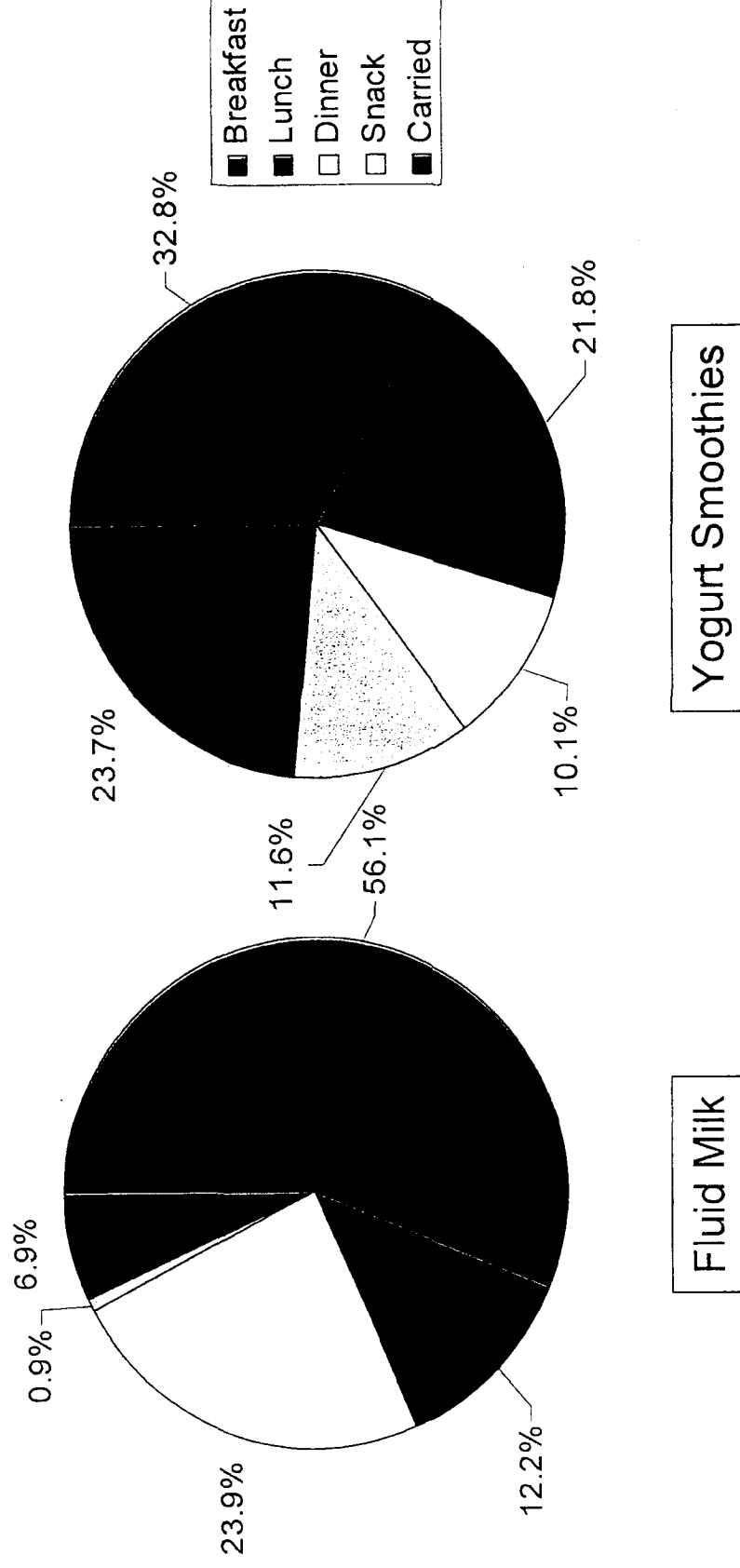
How Consumers Use



Source: NPD

Chart 4

When Consumers Eat

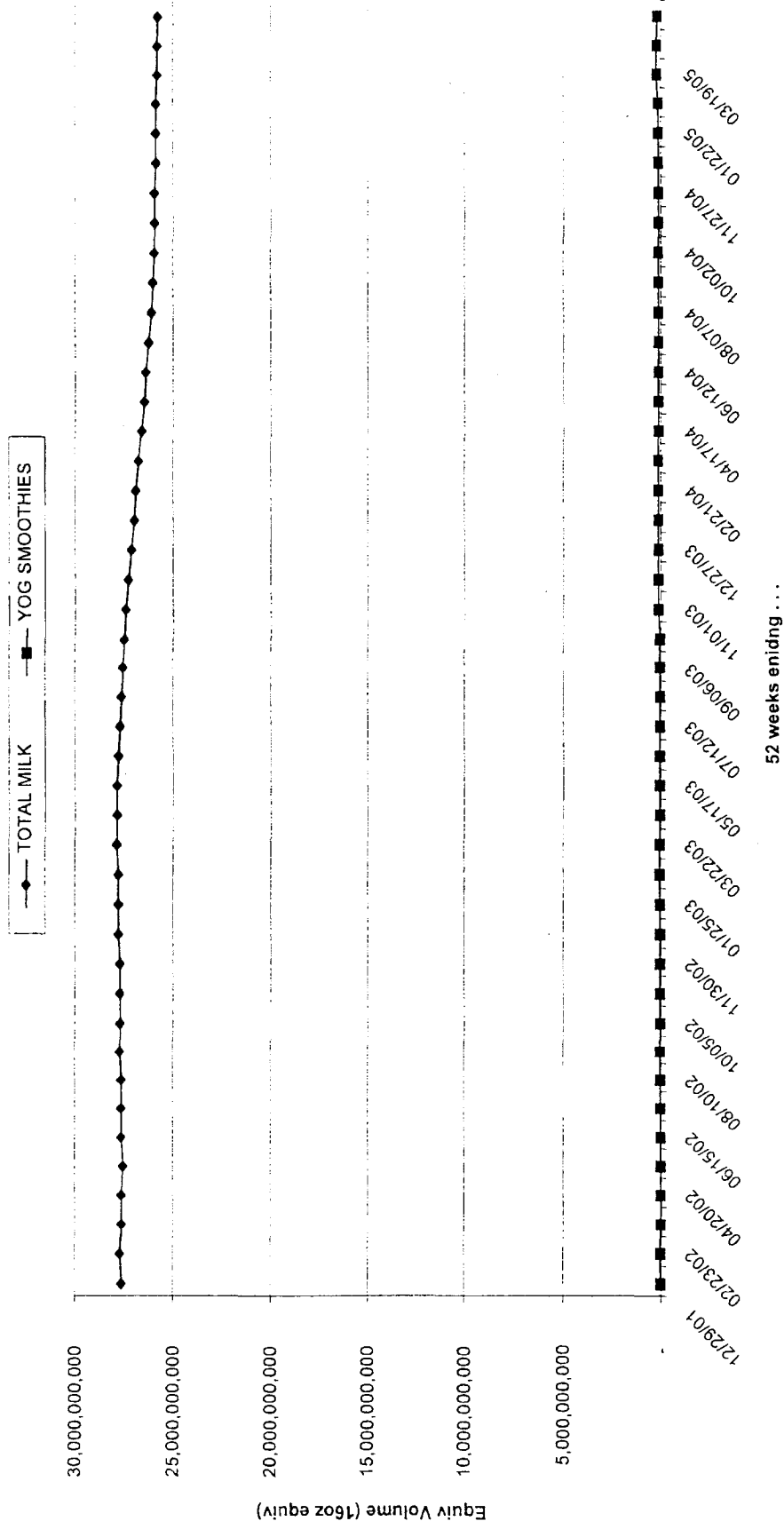


Source: NPD

Chart 5

Yogurt Smoothies Do Not Impact the Fluid Milk Market

Milk and Yogurt Smoothie Volume Trends - Food/Drug/Mass X WM



Source: ACNielsen Scanner

Chart 6

Nutritional Comparison Between Non-Fat Dry Milk and Whey Protein Concentrate[1]

	Non-fat dry milk	Whey Protein Concentrate[2]
Protein	100g	100g
Lactose	50-52%	3.8
Fat	0.6-1.25%	4.5
Calcium	3,850 mg	370 mg
Phosphorus	3,140 mg	625 mg
Potassium	4,850 mg	680 mg
Thiamin	1 mg	0.120mg
Riboflavin	4.9 mg	1.1 mg

Source: NFDM: Composition of Foods.
WPC: GMI ingredient 22-7789 supplier data sheet

NOURICHE

Nutrition Facts

Serving Size 1 Container (325 mL)

Servings Per Container 1

Amount Per Serving

Calories 290

Calories from Fat 0

% Daily Value*

Total Fat 0g 0%

Saturated Fat 0g 0%

Cholesterol 5mg 2%

Sodium 290 mg 12%

Potassium 580 mg 17%

Total Carbohydrate 60 g 20%

Dietary Fiber 6g 22%

Sugars 46g

Protein 10g 20%

Vitamin A 25% • Vitamin C 25%

Calcium 30% • Iron 5%

Vitamin D 25% • Vitamin E 25%

Thiamin 25% • Riboflavin 25%

Niacin 25% • Vitamin B₆ 25%

Folic Acid 25% • Vitamin B₁₂ 25%

Biotin 25% • Pantothenic Acid 25%

Phosphorus 50% • Iodine 25%

Magnesium 25% • Zinc 15%

Manganese 25%

* Percent Daily Values (DV) are based on a 2,000 calorie diet.

INGREDIENTS: PASTEURIZED NONFAT MILK, NONFAT YOGURT (CULTURED PASTEURIZED NONFAT MILK), SUGAR, HIGH FRUCTOSE CORN SYRUP, STRAWBERRIES, INULIN, MODIFIED CORN STARCH, CITRIC ACID, MODIFIED TAPIOCA STARCH, PECTIN, MALIC ACID, LACTIC ACID, DIMAGNESIUM PHOSPHATE, WHEY PROTEIN CONCENTRATE, GELLAN GUM, NATURAL & ARTIFICIAL FLAVOR, TRICALCIUM PHOSPHATE, COLORED WITH BEET JUICE, POTASSIUM SORBATE ADDED TO MAINTAIN FRESHNESS, VITAMIN C (ASCORBIC ACID), IRON (A MINERAL NUTRIENT), VITAMIN E (TOCOPHERYL ACETATE), A B VITAMIN (NIACINAMIDE), ZINC, CALCIUM PANTOTHENATE (A B VITAMIN), MANGANESE, VITAMIN A (PALMITATE), VITAMIN B₆ M(PYRIDOXINE HYDROCHLORIDE), VITAMIN B₁ A(THIAMIN MONONITRATE), BIOTIN, A B VITAMIN (FOLIC ACID), IODINE, VITAMIN D₃, VITAMIN B₁₂, VITAMIN B₂ (RIBOFLAVIN)